

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANA WALLACE, et al.,

Plaintiffs,

v.

UNIVERSAL FIDELITY LP,

Defendant.

CASE NO. C13-0437JLR

ORDER GRANTING JOINT
MOTION TO DISMISS

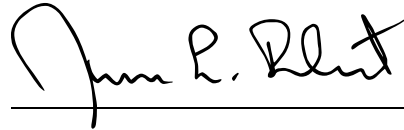
Before the court is the parties' joint motion to dismiss the action with prejudice as to Plaintiff Diana Wallace's individual claims and without prejudice as to the class claims. (Mot. (Dkt. # 27).) On September 18, 2013, the court issued an order directing the parties to provide additional briefing or other materials concerning the factors listed in *Diaz v. Trust Territory of Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989), that the court should consider with respect to settlements executed before class certification. (9/18/13 Order (Dkt. # 28).) The parties have submitted a joint response to the court's order (Joint Resp. (Dkt. # 29)), and the court now considers their joint motion to dismiss.

1 Under *Diaz*, to determine whether pre-certification settlement or dismissal is
2 appropriate, the court must consider possible prejudice from: “(1) class members’
3 possible reliance on the filing of the action if they are likely to know of it either because
4 of publicity or other circumstances, (2) lack of adequate time for class members to file
5 other actions, because of a rapidly approaching statute of limitations, (3) any settlement
6 or concession of class interests made by the class representative or counsel in order to
7 further their own interests.” *Diaz*, 876 F.2d at 1408; *see also Houston v. Cintas Corp.*,
8 No. C05-3145 JSW, 2009 WL 921627, at *1 (N.D. Cal. Apr. 3, 2009) (applying *Diaz*
9 factors).

10 Based on the court’s review of the parties’ joint submission, the court concludes
11 that the *Diaz* factors pose no hurdle to dismissal of this action. There is little reason to
12 believe that putative class members are even aware of this litigation due to the very early
13 stage at which it has been settled, the absence of previous notice to putative class
14 members, and the lack of any indication of widespread publicity regarding the lawsuit.
15 (See Joint Resp. at 6; Kazerounian Decl. (Dkt. # 29-1) ¶ 3.) Further, there is little
16 concern about prejudice to putative class members because they have been dismissed
17 without prejudice and the one-year statute of limitations under the Fair Debt Collection
18 Practices Act, 15 U.S.C. § 1692k(d), was tolled during the pendency of the lawsuit.
19 (Joint Resp. at 6-7; Kazerounian Decl. ¶ 4.) Finally, there is no evidence of collusion
20 between the parties, nor has there been any compromise of the class’s claims because the
21 class will not be bound by the settlement. (Joint Resp. at 7; Kazerounian Decl. ¶ 5.)
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1 The court, therefore, GRANTS the parties' joint motion to dismiss this action. In
2 accord with the parties' joint motion, the court DISMISSES Ms. Wallace's individual
3 claims with prejudice and DISMISSES the class claims without prejudice. Each party
4 shall bear their own costs and fees with respect to this action.

5 Dated this 28th day of September, 2013.

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8 JAMES L. ROBART
9 United States District Judge
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